

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 25004 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DHADHELA KELVANI MANDAL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS MAMTA R VYAS for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/06/2006

ORAL JUDGMENT

1. Rule. Learned AGP Ms. Reeta Chandarana waives
service of notice of rule on behalf of

respondents.

2. The petitioner School-Management has challenged an order dated 20-10-2005 passed by the Commissioner of Midday Meal and Schools, Government of Gujarat.

3. The issue pertains to attempt on part of the petitioner-management to fill up one post of Assistant Teacher reserved for Schedule Tribe community requiring qualification of B.Sc./B.Ed. The advertisement issued by the School Management received only one response. By a rojkam dated 9-2-2004 therefore, it was decided to make one more attempt to have more competition. The authorities however, were of the opinion that the petitioner has committed certain breaches. Before the authorities, the petitioner represented that the petitioner would be willing to grant appointment to the sole candidate who had applied as can be seen from rojkam dated 9-2-2004. The Commissioner however, found it appropriate to direct issuance of fresh

process for selection for the post in question to be made from Schedule Tribe candidates. Noting that School-management has been guilty of certain irregularities, resulting in delay in appointment, Commissioner ordered grant cut of 50% payable to the petitioner from year 2000 onwards till the date of passing of the order. It is this portion of the direction which has aggrieved the petitioner.

4. In so far as direction of Commissioner to undertake fresh exercise for filling up the post in question is concerned, the petitioner through the learned advocate has not raised any grievance. Ms. Vyas for the petitioner in fact submitted that the petitioner would abide by such directions and would undertake fresh exercise as directed. She however submitted that imposition of 50% grant cut is extremely harsh and the petitioner school-management had not committed any default. She also pointed out that order for imposition of cut in grant was not proceeded with by issuance of notice to the

petitioner and such direction is therefore, passed in breach of principles of natural justice. Learned AGP Ms. Reeta Chandarana however, submitted that the petitioner had delayed complying with necessary requirement which resulted into impasse. Cut in the grant is therefore, justified.

5. Having heard the learned advocates appearing for the parties, it would appear that there is no dispute about the direction issued by the Commissioner for undertaking fresh exercise for filling up Schedule Tribe vacancy. The petitioner shall carry out direction accordingly with respect to cut in grant. However, it is not in dispute that no show cause notice was issued to the petitioner before the action was taken. The petitioner was thus not put to any notice about the proposal of cut in grant or its default would result into such an action. In all probabilities, the petitioner ought to have been put to notice permitting the petitioner to make its representation in this regard.

6. In the result, impugned order in so far as ordering cut in the grant payable to the petitioner, is quashed. In facts of the case, if respondents find it necessary to initiate any steps for partial or total cut in grant of the petitioner, same shall be done in accordance with law after giving a reasonable opportunity of being heard to the petitioner. It may be useful to observe the conduct of the petitioner in undertaking fresh exercise before ordering grant cut. This however, is only by way of observation and entire issue is left to the discretion of the authorities.

7. In view of the above observations, the petition is disposed of. Rule made absolute to the above limited extent with no order as to costs.

(Akil Kureshi, J.)

(raghu)